

REMARKS/ARGUMENTS

Claims 1-38 are pending in the application. Claims 1-38 have been rejected. Reconsideration and withdrawal of the rejections set forth in the Office Action dated January 25, 2006, are respectfully requested.

I. Rejections under 35 U.S.C. § 102

Claims 1-38 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Rappaport et al., (U.S. Pub. No. 20040143428). This rejection is respectfully traversed for the following reasons.

A. The Prior Art

The Examiner relies upon Rappaport et al. to reject claims 1-38. The applicants have concurrently herewith submitted a 131 declaration in order to establish priority of invention vis-à-vis the Rappaport et al. reference. The applicants respectfully assert that, at the very least, overcoming the Rappaport et al. reference is sufficient to put all of the pending claims in a condition for allowance. The applicants do not provide any opinion regarding the teachings of Rappaport et al. because no such opinion is deemed necessary.

B. The 131 Declaration

The essential thing to be shown under 37 C.F.R. § 1.131 is priority of invention and this may be done by any satisfactory evidence of the fact. *MPEP 715.07*. The 131 Declaration includes a series of facts, including dates of diligent activity, along with an assertion of diligence, of character and weight sufficient to establish diligence. As with conception, the applicants have made a *prima facie* showing of diligence, accompanied by facts supporting the declaration.

The 131 Declaration establishes a date of invention prior to January 22, 2003. The priority date of Rappaport et al. is at best January 22, 2003. It should be noted that the priority date of Rappaport et al. could be as late as March 13, 2003, if the Rappaport et al. publication is different from the provisional application, filed on January 22, 2003, to which Rappaport et al. claims priority.

The 131 Declaration establishes diligence from before January 22, 2003 to September 17, 2003. On September 17, 2003, a patent application was filed, which is a constructive reduction to practice.

The 131 Declaration includes a table with facts corresponding to, for example, the elements of Claim 1. The applicants respectfully assert that the facts provided in the appendices of the 131 Declaration correspond to the independent claims 37 and 38, too. Claims 2-36, which depend either directly or indirectly from the independent claims 1, are allowable at least for depending from allowable base claims.

C. The Prior Art Distinguished

All of the Examiner's rejections rely upon Rappaport et al. Since the date of conception associated with the pending claims, followed with diligence to constructive reduction to practice, is prior to the best priority date of Rappaport et al., the applicants respectfully submit that claims 1-38 are allowable over the prior art of record. Accordingly, claims 1-38 are believed to be in a condition for allowance.

II. Conclusion

In view of the foregoing, the claims pending in the application comply with the requirements of 35 U.S.C. § 112 and patentably define over the prior art. A Notice of Allowance is, therefore, respectfully requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (650) 838-4300.

Respectfully submitted,
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